ORIGINAL CIVIL.

Before Chaudhuri J.

ADMINISTRATOR-GENERAL OF BENGAL

v.

A. D. CHRISTIANA.*

1915

June 9.

Will—Succession Act (X of 1865) ss. 311, 312—Demonstrative legacy—Interest, whether payable on a demonstrative legacy—Where no time for payment fixed by will, the time from which interest runs.

Where a testator had bequeathed legacies to several grandchildren named in the will to be paid from the sale proceeds of certain house property after the death of a daughter and the marriage of a granddaughter and it was contested that inasmuch as there is no specific provision in the Succession Act for the payment of interest on demonstrative legacies, no interest was payable :—

Held, (*a*) that interest is payable upon demonstrative legacies ; and (*b*) that where there is no time for payment fixed, although the amount is expressly made payable out of a particular fund, the case is governed by the principle laid down in *Lord* v. *Lord* (1), and s. 311 of the Succession Act applies. Also *held*, that the rate of interest is 4 per cent per annum.

Lord v. *Lord* (1), *Chinnam Rajamannar* v. *Tadikonda Ramachendra Rao* (2), *Mullins* v. *Smith* (3), and *In re Walford*, *Kenyon* v. *Walford* (4), referred to and followed.

In this case the Administrator-General for Bengal took out an originating summons for the determination of certain questions which had arisen in connection with the administration of the estate of one Alexander Watson Christiana, who died in Calcutta leaving a will dated 1st October 1897. Probate of the will was granted on 10th January 1898 to the executor appointed by the will who administered the

*Original Civil Suit No. 597 of 1915.

(1) (1867) L.R. 2 Ch. App. 782, 789.
(2) (1905) I.L.R. 29 Mad. 155.
(3) (1860) 1 Drew & Sm. 204.
(4) [1912] 1 Ch. 219, 225.

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estate until 13th January 1911, when he transferred the estate to the Administrator-General of Bengal under the power given to him by the will and the power vested in him by s. 31 of the Administrator-General's Act (I of 1874).

By his will the testator after giving certain annuities and legacies, which are immaterial for the purposes of this report, made the following bequests and dispositions: "To my grandchildren named in the margin I leave Rs. 1,000 each from the sale of house No. 8, Lindsay Street and my half share of house No. 4, Crooked Lane that is after the death of my daughter Mrs. Georgiana Harriet Russell and the marriage of my granddaughter Florence Elder."

With one exception the grandchildren referred to in the bequest were alive and had attained majority; and the time for the payment of the legacies and the distribution of the residue had arrived. The questions that had arisen and which the Court was asked to determine were:

(*i*) Whether interest is payable out of the estate of the testator on the legacies of Rs. 1,000 to each of the surviving grandchildren named in the margin of the will and the representative of the deceased grandchild, and if so, from what date and at what rate?

(*ii*) Amongst whom is the residue of the estate divisible?

Mr. M. Zorab, for the Administrator-General of Bengal, with reference to the question as to payment of interest upon a legacy when no time has been fixed, referred to the case of *In re Walford, Kenyon* v. *Walford* (1).

Mr. R. C. Bonnerjee, for Alexander Danvers Christiana and Louisa Amelia Sinclair, submitted that the

1) [1912] 1 Ch. 219.

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will directed that the residue was to be divided equally among the testator's sons and daughter; and that the daughter intended to be benefited was Mrs. Sinclair.

Mr. H. G. Pearson, on behalf of Mrs. Elizabeth Christiana Swaries as administratrix of the property and credits of Georgiana Harriet Russell and on behalf of herself and other the grandchildren legatees and the representative of a deceased grandchild legatee, contended that although the legacies to the grandchildren named in the margin of the will were demonstrative legacies, a demonstrative legacy is from most points of view a general legacy: see Jarman on Wills, 6th edition, p. 1069, and *Mullins* v. *Smith* (1), therefore either s. 311 or s. 312 of the Succession Act is applicable according to the circumstances of the case. Inasmuch as in this case there was no express direction fixing the date of payment, s. 311 of the Succession Act applied. He also referred to Williams on Executors, 10th ed., p. 913.

CHAUDHURI J. This suit relates to the estate of one Alexander Watson Christiana. He left a will dated the 1st October 1897. On the 10th January, 1898, probate was granted. The Administrator-General is now in possession of the estate. The following questions have arisen, and the plaintiff is desirous to have them determined by this Court. (i) Whether interest is payable out of the estate of the testator, on the legacies of Rs. 1,000, to each of the surviving grandchildren named in the margin of the said will and the representative of a deceased grandchild, and, if so from what date and at what rate? (ii) Amongst whom, in the events which have happened, is the residue of the estate of the testator, after payment of the

(1) (1860) 1 Drew & Sm. 204.

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aforesaid legacies of Rs. 1,000 each, and interest thereon, if any, divisible, and in what shares and proportions is it so divisible? The paragraphs in the will relating to the legacies run thus:—"To my grandchildren named in the margin I leave Rs. 1,000 each from the sale of house No. 8, Lindsay Street and my half share in house No. 4, Crooked Lane, that is after the death of my daughter Mrs. Georgiana Harriett Russell, and the marriage of my granddaughter Florence Elder." These legacies are demonstrative legacies, and the question is as to whether any interest is payable upon these legacies. The Succession Act, section 311 provides "where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death." There are certain exceptions to that section to which I need not refer at present. Section 312 deals with the question of interest where time has been fixed for payment of a general legacy. The first point argued in this case is that inasmuch as there is no specific provision for payment of interest for demonstrative legacies, no interest was payable in this case. It has, however, been held in the case of *Chinnam Rajamannar* v. *Tadikonda Ramachendra Rao* (1), that the law in England relating to interest on a demonstrative legacy is applicable to sections 130 and 131 of the Probate and Administration Act, which correspond to sections 311 and 312 of the Indian Succession Act. The learned Judges held in that case that the absence of a distinct provision in regard to the payment of interest on demonstrative legacies did not imply an intention to disallow interest in such cases. They approved and followed the case of *Mullins* v. *Smith* (2). I follow the decision of the Madras Court and

(1) (1905) I. L. R. 29 Mad. 155. (2) (1860) 1 Drew & Sm. 204.

hold that interest is payable on demonstrative legacies. The question is whether section 311 or 312 is applicable to this case, that is to say, whether a time has been fixed for the payment of the legacy, or whether there is no fixed time for such payment. The principle applicable to cases of this kind has been laid down by Lord Cairns L. J. in the case of *Lord* v. *Lord* (1) in these terms. "The rule of law is clear, and there can be no controversy with regard to it, that a legacy payable at a future day carries interest only from the time fixed for its payment. On the other hand, where no time for payment is fixed, the legacy is payable at, and therefore bears interest from, the end of a year after the testator's death, even though it be expressly made payable out of a particular fund which is not got in until after a longer interval." That principle has been upheld and followed in *Re Walford*, *Kenyon* v. *Walford* (2). Here there is no express direction fixing the date of payment. It seems to me to be a case covered by the ruling in *Lord* v. *Lord* (1), that is to say, that there is no time for payment fixed, although the amount is expressly made payable out of a particular fund, which was not to be got in until after a longer interval. The testator said that he was leaving Rs. 1,000 each to the grandchildren, that it was to be paid out of the sale of the premises 8 Lindsay Street and his share in 4 Crooked Lane, and that such sale was not to take place till after the death of Mrs. Georgiana Harriett Russell and the marriage of his granddaughter, Florence Elder. Mrs. Georgiana Harriett Russell died on the 13th February 1915, and Florence Elder was married on the 30th June 1909. Therefore it seems to me to be a case which is governed by the decision I have referred to, and in that view I think

(1) (1867) L. R. 2 Ch. App. 782, 789. (2) [1912] 1 Ch. 219, 225.

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section 311 of the Succession Act applies. It is necessary to refer to Exception (2) to that section. This is a case where the testator is not the parent, but a mere remote ancestor. I understand that the legatees, Elizabeth Christiana Swaries and Jessie Houston Russell, have attained majority, but it is unnecessary to refer to their case, because no distinction is made in the section in respect of adults and minors. Now about the rate of interest. The Act provides 4 per cent. which will be the rate allowed upon these legacies. The further question is about the division of the residue. The clause in the will dealing with it runs thus:—"The remaining portion as well as the balance of the accumulated interest or any other money that may be due is to be equally divided among my sons and daughter." I have examined the original will, and learned counsel appearing for the parties have also seen it. There is no question that the expression "daughter" there is in the singular, and there is no mistake in the copy annexed to the plaint. The difficulty that has arisen is owing to the fact that the testator had two daughters, and the question is, to which of these daughters does this clause refer; and, if it is uncertain, can it have any effect so far as the daughters are concerned. It is clear to my mind that the daughter referred to in that clause is Louisa Amelia Sinclair. The residue is only to be divided after the payment of the legacies, which can be only ascertained after the death of the daughter, Mrs. Georgiana Harriett Russell, and therefore there is only one daughter left at the time of the division of the residue, and that daughter is Louisa Amelia Sinclair. Therefore the residue is to be divided according to the ordinary rule, there being two sons and one daughter. Costs of this suit of all the parties to

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come out of the estate. The costs of the Administrator-General to come out of the estate as between attorney and client to be fixed on scale No. 2.

Attorneys for the Administrator-General: *Morgan & Co.*

Attorneys for A. D. Christiana and Mrs. L. A. Sinclair: *Watkins & Co.*

Attorneys for Mrs Swaries and grandchildren: *Leslie & Hinds.*

W. M. C.

APPELLATE CIVIL.

Before Woodroffe and Newbould JJ.

1915

June 14.

EUSUFFZEMAN SARKAR

v.

SANCHIA LAL NAHATA.*

Execution of Decree—Decree-holder—Payment of money by Judgment-debtor by way of interest—Notification of the payment to Court—Certification of the payment—Civil Procedure Code (Act V of 1908) O. XXI, r. 2—Limitation Act (XV of 1877) ss. 19, 20.

A decree-holder who has received a certain sum of money by way of payment of interest might either apply to certify payment before execution or might do so on his application for execution of the decree.

On the 17th February, 1906, the plaintiff obtained a decree and on the 18th May, 1911, he applied for execution. At the time of the application he notified to the Court that he had received a certain sum on the 19th June, 1908, from the judgment-debtor towards interest and alleged that the execution was not barred by limitation:—

Held, that the notification to the Court of the receipt of the sum paid by the judgment-debtor was all that the decree-holder had to do in order

* Appeal from Appellate Order, No. 11 of 1913, against the order of the District Judge of Rangpur, dated Sep. 23, 1912, reversing the order of Bipin Chandra Chatterji, Munsif of Rangpur, dated Jan. 29, 1912.